

SEP 30 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

MAX HULSE; SCOTT HULSE,

Plaintiffs - Appellants,

v.

DONALD L. EVANS; DEPARTMENT OF
COMMERCE; NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION;
NATIONAL MARINE FISHERIES
SERVICE,

Defendants - Appellees,

and,

NORMAN MINETA,

Defendant.

No. 02-35324

D.C. No. CV-01-00002-JWS

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
John W. Sedwick, District Judge, Presiding

Argued and Submitted August 13, 2003
Anchorage, Alaska

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Before: PREGERSON, CANBY, and McKEOWN, Circuit Judges.

Plaintiffs-Appellants Scott and Max Hulse appeal the district court's summary judgment dismissal of their action alleging that the Secretary of Commerce ("Secretary"), through the National Marine Fisheries Service, violated the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson Act"), 16 U.S.C. §§ 1801 *et seq.*, by approving a program to limit all fishermen's access to the Alaska weathervane scallop fishery by limiting the number of licenses and by restricting, on the basis of past participation in the fishery, the amount of fishing gear allowed on some of the fishing vessels.

We review the Secretary's decision to promulgate regulations for reasonableness. Washington Crab Producers, Inc. v. Mosbacher, 924 F.2d 1438, 1441 (9th Cir. 1991). We find that the Secretary did not act unreasonably in determining that the license limitation program amendment to the Fishery Management Plan proposed by the North Pacific Fishery Management Council complies with National Standards Two, Four and Five set forth in Section 301 of the Magnuson Act, 16 U.S.C. § 1851 (a). We also find that the Secretary did not act unreasonably by finding that the license limitation program properly took into

account regulatory factors as required by the Magnuson Act under 16 U.S.C. § 1853 (b)(6).

Accordingly, we affirm the district court's grant of summary judgment in favor of the Secretary.

AFFIRMED.